

Message Text

CONFIDENTIAL

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ACTION ARA-14

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TO SECSTATE WASHDC 2047
INFO AMEMBASSY LONDON

C O N F I D E N T I A L CARACAS 3816

E.O. 11652: GDS
TAGS: ENRG EINV VE
SUBJECT: OVERRIDING ROYALTY RIGHTS HOLDERS IN VENEZUELA

REF: (A) 77 STATE 48781 (NOTAL) (B) 77 CARACAS 13240
(C) 76 CARACAS 9610 (NOTAL)

1. A LOCAL ATTORNEY ASSOCIATED WITH EXXON AND POSSIBLY OTHER COMPANIES ADVISED THE EMBASSY THAT A CLAIM BY HOLDERS OF OVERRIDING ROYALTY RIGHTS AGAINST THE EX-CONCESSIONAIRE OIL COMPANIES IN VENEZUELA IS CURRENTLY BEING REVIEWED IN THE NEW YORK COURTS AND APPEARS TO BE AT A CRITICAL POINT. THESE CLAIMS RELATE TO THE PAYMENT BY THE OIL COMPANIES OF OVERRIDING ROYALTIES ON OIL CONCESSIONS WHICH WERE TERMINATED AS OF JANUARY 1, 1976 WITH THE NATIONALIZATION OF THE OIL INDUSTRY. (SEE REFS BA AND C FOR ADDITIONAL BACKGROUND). HE INDICATED THAT A RULING FAVORING THE CLAIMANTS COULD LEAD TO THE RELEASE OF CONFIDENTIAL DOUCMENTS BY THE COMPANIES WHICH IN TURN COULD BE POLITICALLY EMBARRASSING TO THE GOV.

2. THE ATTORNEY EXPLAINED THAT THE COMPANIES HAVE ARGUED BEFORE THE U.S. COURTS THAT BECAUSE THE CLAIM
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DEALS WITH A "FUNDAMENTAL" LAW OF VENEZUELA, I.E. THE NATIONALIZATION LAW, THE CSE SHOULD BE TRIED IN A VENEZUELAN COURT. HE ADDED THAT THE CLAIMANTS WERE ALMOST CERTAIN TO LOSE IN A VENEZUELAN COURT, SINCE NO VENEZUELAN WOULD ACCEPT THAT COMPENSATION SHOULD BE PAID FOR THE OIL CONCESSIONS AS SUCH. THE COMPANIES LOST THE CASE IN A LOWER COURT IN NEW YORK,

AND ARE LIKELY TO LOSE THEIR APPEAL, POSSIBLY IN THE VERY NEAR FUTURE, UNLESS VENEZUELA'S ATTORNEY GENERAL ISSUES A STATEMENT AFFIRMING THAT THE NATIONALIZATION LAW IS A "FUNDAMENTAL" LAW. THE ATORNEY SAID HE HAS BEEN UNSUCCESSFUL SO FAR IN OBTAINING SUCH A RULING. HE SAID THERE IS A PRECEDENT FOR THIS IN A CASE INVOLVING PEMEX, MEXICO'S NATIONAL PETROLEUM COMPANY, IN WHICH THE MEXICAN ATTORNEY GENERAL ISSUED SUCH A RULING AND THE U.S. COURT RELINQUISHED JURISDICTION TO THE MEXICAN COURTS.

3. IF THE COMPANIES LOSE THEIR APPEAL, HE SAID THE U.S. COURTS COULD REQUIRE THEM TO PRESENT ALL DOCUMENTS RELATING TO THEIR DEALINGS WITH THE GOV ON THE NATIONALIZATION OF THEIR HOLDINGS. ALSO, SINCE HE UNDERSTANDS THIS IS A CLASS ACTION SUIT, THE COURT WOULD INFORM ALL OVERRIDING ROYALTY HOLDERS OF THE CASE, INCLUDING MANY VENEZUELANA WHO HAVE NEVER ATTEMPTED TO MAKE A CLAIM. AMONG THESE IS MIGUEL OTERO SILVA, WHO IS A LEADING VENEZUELAN AUTHOR, PART OWNER OF THE MAJOR CARACAS DAILY NEWSPAPER EL NACIONAL, A LEFTIST POLITICIAN AND A LONG TIME FOE OF THE GOVERNING AD PARTY. THE ATTORNEY INDICATED OTERO SILVA MIGHT USE THE CASE TO EMBARRASS THE GOV IN THE CURRENT POLITICAL CAMPAIGN.

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4. COMMENT: THE ATTORNEY SAID HE THOUGHT THE EMBASSY SHOULD BE AWARE OF THE CASE, BUT ASKED FOR NO ASSISTANCE. THIS WAS THE FIRST REAL INDICATION WE HAVE HAD THAT THE CLAIMANTS ARE ACTIVELY SEEKING REDRESS IN THE U.S. COURTS. MR CHADWICK COLLINS, LOCAL REPRESENTATIVE OF ONE GROUP OF CLAIMANTS, HAS NOT RAISED THE CASE WITH US SINCE WE INFORMED HIM, PER REF A, THAT THE USG WOULD NOT BE ABLE TO ASSIST HIM IN PRESENTING THE CASE TO THE GOV. VAKY

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